IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 215 OF 2007
IN
CRIMINAL APPEAL NO. 186 OF 2007

Pramod Purushottam Sathe ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr. S.R. Chitnis, Senior Counsel with Mrs.V.R. Raje for applicant.
Mrs.S.D. Shinde, APP for State.

CORAM: B.H. MARLAPALLE & R.S. MOHITE,JJ.

Date : February 27, 2007.

P.C.:

1. We have heard Mr. Chitnis, the learned Senior Counsel with Mrs. V.R. Raje for the applicant who has filed an application under Section 227 of Cr.P.C. praying for his discharge and the said application has been rejected by the learned Judge of the Special Court on 9/3/2005. The said order has been challenged by filing Criminal Appeal No. 186 of 2007 under Section 12 of the M.C.O.C., Act.

2. In support of the prayer for condonation of delay it has been contended by the applicant that

during the intervening period of about last two years two important judgments were delivered under the provisions of the M.C.O.C. Act clarifying certain aspects as regards the order of approval and the sanction order respectively under Section 23 of the said Act. The first judgment is by this Court (Single Bench) in the case of State of Maharashtra vs. Bharat Baburao Gavhane and ors. **[2006 ALL MR. (Cri.) 2895]** and the second judgment is dated 13/2/2007 rendered by the Apex Court in the case of State of Maharashtra and ors. Vs. Lalit Somdatta Nagpal and anr. The following observations in Lalit Somdatta Nagpal's case are more particularly relied upon by Mr. Chitnis:-

> ".....Having regards to the stringent provisions of the MCOCA, Section 23(1)(a) provides a safeguard to the accused in that notwithstanding anything contained in the Code of Criminal Procedure, no investigation of an alleged offence of organized crime under the MCOCA, 1999 can be commenced without the prior approval of a police office not below the rank of Deputy Inspector General of Police. An

additional protection has been given under Sub-section (2) of Section 23 which prohibits any Special Court from taking cognizance of any offence under the Act without the previous sanction of a police officer not below the rank of Additional Director General of Police.

. In the instant case, though sanction had been given by the Special Inspector General of Police, Kolhapur Range, on 31st August, 2004, granting permission under Section 23(1)(a) of the MCOCA, 1999 to apply its provisions to the alleged offences said to have been committed by Anil Nagpal, Lalit Nagpal and Vijay Nagpal, such sanction reveals complete non-application of mind as the same appears to have been given upon consideration of an enactment which is non est. Even if the subsequent approval order of 22nd August, 2005 is to be taken into consideration, the organized crime referred to in the said order is with regard to the alleged violation of Sales Tax and Excise Laws, which, in our view,

was not intended to be the basis for application of the provisions of the MCOCA 1999. To apply the provisions of MCOCA something more in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of within the definition of "organized crime" in Section 2(e) of MCOCA.

. In our view, both the sanctions which formed the very basis of the investigation have been given mechanically and are vitiated and cannot be sustained. In taking recourse to the provisions of the MCOCA, 1999, which has the effect of curtailing the liberty of an individual and keeping him virtually incarcerated, a great responsibility has been cast on the authorities in ensuring that the provisions of the Act are strictly adhered to and followed, which unfortunately does not appear to have been done in the instant case."

3. In our considered opinion the above said judgments relied upon by the applicant cannot be a reason to condone the delay, more so when the applicant is not de-barred from reapproaching the Special Court with an application under Section 227 of Cr.P.C. on the basis of the above cited two judgments which have been rendered during the intervening period of last two years and in the peculiar facts of this case when the trial has not yet commenced and the applicant is in custody. Mr.Chitnis the learned Senior Counsel also submitted that if such a fresh application is moved by the applicant, it would be just and proper that the same is decided on its own merits within a fixed period and on the basis of the judgments so relied upon.

4. The application is, therefore, rejected. However, the applicant, if he so desires, may approach the Special Court with a fresh application on the basis of the above cited two judgments and if such an application is moved within a period of four weeks from today, we direct the Special Court to hear the same and decide on its own merits as expeditiously as

possible and preferably within a period of 90 days from its presentation.

(R.S. Mohite, J.) **(B.H. Marlapalle,J.)**